

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 609 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI and
MR.JUSTICE J.R.VORA

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

MITU RAMJI

Versus

STATE OF GUJ

Appearance:

MR PJ YAGNIK for appellant

Mr.S.R.Divetia, Addl. PUBLIC PROSECUTOR for Respondent

CORAM : MR.JUSTICE S.M.SONI and
MR.JUSTICE J.R.VORA

Date of decision: 01/04/98

ORAL JUDGEMENT (Per Soni J.)

Appellant - original accused in Sessions Case no.24 of 1991, is convicted by the judgment and order dated 30.7.91 by Additional Sessions Judge, Gondal. Appellantt accused is held guilty for offences punishable under sections 376 (2)(F), 366, 363 and 323 I.P.C. and

is sentenced to R.I. for life and fine of Rs.5000/-, in default R.I. for one year for offence under sec.376 (2)(f) and R.I. for ten years for offence under sec.366 of I.P.C. No separate sentences are passed for offences under sections 363 and 323 of I.P.C. It is also ordered that the substantive sentences to run concurrently.

Few facts of the prosecution case are as under:

One Chandrikaben, a minor aged about 10, had gone to her school for studies by noon time on 3.1.91. On school being closed in the evening by about 5.00, she proceeded towards her home. She was not able to walk properly, as she had some injuries on her heels. As other girls had proceeded ahead, she was going slowly. By about 5.30 P.M., when she reached near Panchvati society, one Mitu Ramji passed by on a bicycle. He told her "have a ride on cycle, I am going towards your house". She declined. Yet she was forcibly asked to sit on cycle and he proceeded towards Dhoraji road. On enquiry by her, he told her that they are going near railway crossing and they will just return back. On reaching near crossing, he stopped the cycle. She was taken in pits on the road side of that crossing. There, he spread bedsheet and she was asked to lie down. She denied to lie down. Therefore, she was given 2-3 slaps and was made to lie forcibly. He removed her clothes and despite her hesitation, he committed an act, which may amount to an intercourse. She had a pain on the chest. By that time, one person came there and that Mitu separated from her and she ran. Mitu also quarrelled with that man and as there was hubbub, other persons working in ghat had also come. As she was bleeding from vagina, some person, who had come there, left her at her residence. Someone called her father and they went to Hospital, where they were advised to go to the Police. They had, therefore, gone to the Police and complaint was registered. On complaint being registered, investigation was carried out by N.B. Kalaswa P.W.16. Then the said investigation was handed over to M.T.Mehta P.W. 17, who submitted chargesheet against the accused in the court of J.M.F.C., Jetpur, who, in his turn, committed the case to the court of Sessions at Rajkot.

Learned Additional Sessions Judge, Gondal, District Rajkot, framed charge against the accused under sections 323, 363, 366, 376 (2)(F) of I.P.C. Accused pleaded not guilty and claimed to be tried. As accused could not afford to engage a lawyer, he was provided with Advocate Mr.D.D.Anjaria at the cost of the State. On completion of the evidence for prosecution, further statement of the accused under sec.313 of Cr.P.C., 1973 was recorded. Accused has not led any evidence for defence. From the nature of cross-examination of the

witnesses and his further statement, defence is of a total denial and in particular about the identity of the accused. Learned Additional Sessions Judge, after hearing the parties, held proved the charges levelled against the accused and has recorded the conviction and passed order of sentence referred above.

Learned Advocate Mr.P.J.Yagnik appearing for the appellant - accused has challenged the conviction on the ground that the identity of the accused is not established as a person who has committed the alleged act of rape. Mr.Yagnik has contended that prosecution has failed to examine some of the witnesses, through whom it is alleged that the name of the accused is disclosed. In absence of examination of those witnesses, say of the witnesses, who are examined by the prosecution, is a hearsay evidence and not admissible in law. Mr.Yagnik further contended that there is no independent corroboration to the say of the prosecution witnesses. Mr.Yagnik, therefore, contended that the appeal be allowed and appellant - accused be acquitted.

Mr.Divetia, learned A.P.P., contends that this is a full-proof case. Injured victim - prosecutrix has in so many words not only described the incident, but has named the accused and has identified him even in the court room. Prosecutrix had sufficient time to see the face of the accused, which she would never forget in view of the act committed with her. It is in evidence that she has asked the name of the accused and accused has replied the same. Therefore, this is not a case of mistaken identity. Mr.Divetia further contended that incident took place in the month of January at about 6.00 PM and there was sufficient light to see the accused and identify him. Mr.Divetia further contended that the incident took place at about 6.00 PM and the complaint is lodged by 7.00 PM and, therefore, there is no time left for the prosecutrix either to concoct the story or manipulate the instances or evidence against the accused. Mr.Divetia further contended that there is no reason why prosecutrix should have named the accused. He further contended that this is the second offence under this very provision i.e. sec.376 I.P.C., committed by the appellant -accused. Mr.Divetia, therefore, contended that there is no reason to interfere with the finding recorded by learned Additional Sessions Judge and the appeal should be dismissed.

The fact that the prosecutrix is a minor is not seriously disputed by the learned Advocate for the appellant. P.W.11 Labhuben, mother of the prosecutrix, has deposed that birth of prosecutrix was registered with Jetpur Nagarpalika and the copy of the birth certificate issued by Jetpur Nagarpalika is at Ex.24. Her birth date

shown there is of 20.11.79. Ex.24 is proved by evidence of P.W.9 Hematsingh, a clerk serving in Birth and Death Registration Branch of Jetpur Nagarpalika. He has produced the extract of the Register, where birth of prosecutrix is registered. It is Ex.23 and the birth date is shown as 20.11.79. Name of the child is shown as Mangala in Exs.23 and Ex.24. However, in Ex.24 name Mangala is scored out and name Chandrika is written. Question is whether Ex.24 pertains to prosecutrix or one Mangala? Mother of the prosecutrix P.W.11 has explained how name Mangala is changed to Chandrika. She has stated that at the time they went to get the birth registered in Nagarpalika, name of Mangala was registered. As Mangala was not keeping well, some Brahmin advised them to change her name and, therefore, they had changed her name from Mangala to Chandrika. At the time of her entry in the school, her name is shown as Chandrika. At the time of getting admission in the school, a vali form is required to be filled up and that vali form is at Ex.30 and proved by the evidence of P.W.11. There, name of prosecutrix is shown as Chandrika and the birth date is shown as 20.11.79. In cross-examination of P.W.11, this fact of change of name from Mangala to Chandrika is neither disputed nor challenged. Thus, prosecution has proved, and the learned Addl.Sessions Judge has rightly held, that the birth date of prosecutrix is 20.11.79. On the date of incident i.e. 3.1.91, she was 11 years, 2 months and 13 days old. Thus, prosecutrix was a minor on the date of incident.

Prosecutrix P.W.4 was sent to Rajkot where she was examined by Dr.Bharat H Trivedi. After examining the x-ray plates taken by Dr.Domedia being Ex.45 and 46 and the certificate issued by him, he has given an opinion vide Ex.43 to the following effect:-

"Opinion: Radiological age between 10 to 12 years. From the radiological examination of Chandrikaben Manubhai, bearing the above stated identification mark, I am of the opinion that the individual is aged about 10 to 12 years on the day of examination i.e. 4.1.91".

In cross-examination of this witness P.W.14, he has admitted that age of the girl can be 12 years also. It appears that this question is put in view of the certificate issued by the doctor that age of the prosecutrix is about 10 to 12 years. No other part of evidence is seriously disputed. Thus, it is clear from the evidence of Dr Bharat P.W.14 and evidence of Labbuben P.W.11, mother of the prosecutrix, that the prosecutrix was between 10 to 12 years of age.

P.W.4, prosecutrix, ran towards wadi of Chandubhai when some person came near the pit and accused

had released her. At the wadi of Chandubhai, one Sureshbhai P.W. 2 was sitting, who enquired from the prosecutrix about the incident and he took her on his mother cycle and left her at her residence. She went home crying where her father was not there and she talked to her mother about the incident. Her mother and maternal aunt took her to Jetpur Hospital, where they were advised first to go to Police Station and then to come back to the hospital. They have, therefore, gone to the Police Station, lodged the complaint and were brought back to the hospital. She was examined by Dr.Sureshkumar P.W.13.

After examination, Dr.Sureshkumar P.W.13 has issued certificate at Ex.39. The relevant part, for our purpose, reads as under:-

2. A. both labia majors: clotted blood over
 mergins C redness and intermnation
- b. Bleeding from vagina
- c. Hymen lacerated and torned - fresh
3. Painful distensibility of Hymen of Vamia
 interm of one little finger.
4. No pubic hair developed.
5. Semen stain taken from Rt. thigh and slide
 made from it.
6. Underwear Posterior (Back) part of this
 cloth. There is presence of blood and white
 spots. Handed over to Police department.
 Clothes soiled with mud.
7. No sign of venereal disease
8. Mark of violence (1) Multiple abrasion with
 1/2' x 2" contusion upper part and (2) 1/2" x 1"
 contusion at lower part of Rt. nipple and around
 it. (2) Multiple abrasion with 1/2 " x 2"
 contusion upper part Rt. nipple and around it.
9. Gait of victim. Difficulty in walking.
10. Vagina swab taken from vaginal formix
 (posterior formix). 1. Vaginal smear-swab (a)
 bulb (BO slide). 2. Private part and thigh
 inner slide (3)Setiva (4) mood send for CA
 through PSI Jetpur taluka.

Admitted in ---- wd.Case no. ----- Discharged
on ----- . Injury no.-----are such could be
caused by hart blunt sharp cutting substance and
would normally take ----- days/weeks to heal if
no complication arise".

Certificate Ex.39 is issued on the basis of case papers at Ex.38. Prosecutrix was again examined by Dr.Hansraj P.W.5, Medical Officer of General Hospital,Rajkot. She was examined by that doctor on 4.1.91 and had opined that "from the above clinical finding, it can be concluded

that she is attempted for sexual intercourse within 24 hours and report of vaginal smear further may guide us". He has issued certificate at Ex.14. Thus, on reading certificate Ex.39, case papers at Ex.38 and certificate at Ex.14, it is clear that the prosecutrix was attempted for sexual intercourse at the alleged time and date, said by her. We may state that this act of attempt to rape is also not seriously disputed by learned Advocate for the appellant.

What is seriously disputed is whether this alleged act of an attempt to commit rape is by accused and accused alone ? Whether prosecution has been able to conclusively establish the identity of the accused as a person to have committed this Act ? Learned Advocate Mr.Yagnik contends that prosecution has failed to prove the identity of the accused as a person to have committed this alleged act of attempt to commit rape.

To substantiate his say, Mr.Yagnik took us through the evidence of prosecutrix P.W.4. P.W.4 has deposed: I reached near tea cabin. It was 5.40 to 6.00 at that time. One person on bicycle met me on the way. Name of that cyclist is Mitio. If I see that cyclist Mitio, I can identify him. That Mitio is present in the accused dock in court (witness identifies the person sitting in the accused dock as Mitio). Accused has told me that he knows my mother and father. He will leave me at my home if I sit on the cycle. I, therefore, asked his name. Accused, therefore, replied his name as Mitio. I refused to sit on the cycle, but accused caught hold of my hand, forcibly sat me in the front side of the cycle. Accused then took me to canal on cycle. I told the accused that my house is not in this direction. Accused told me that he has some work with me. Accused took the cycle near the railway crossing and he took me in a pit near the crossing. There, he spread bedsheet One person came there to answer the call of nature. As that person came to answer the call of nature, accused got up from over me. I got released and ran. I took my chorni (trouser), my dafther (school bag) and ran I started crying. At that time, accused gave me slaps. The person who had come to answer the call of nature told me to go away to the wadi of Chandubhai. I, therefore, went to the wadi of Chandubhai. Accused flew away on his cycle There were persons at the wadi of Chandubhai. They told me to put on my trouser. I, therefore, put on my trouser and nicker also. One person had a motor cycle and he left me on that motor cycle at my home Person who was at wadi asked me as to what had happened. I told him what had happened. Person who was at the wadi asked me about my name and names of my parents. ... Other

persons told me that it is Mitio khat. I had not given the name of the accused to the person who was at the wadi." She has further deposed that Police had arrested the accused. Thereafter, she had identified the accused before the Police. In the cross-examination, she has admitted that "I was not knowing the name of the accused before incident. I knew the name of the accused because accused told me his name".

Keeping in mind this evidence of prosecutrix, we will now refer to the evidence of Sureshbhai P.W.2. P.W. 2 in his evidence has deposed that the incident took place between 5.45 to 6.00 in the evening of 3.1.91. He was at his wadi at that time. Then he went to the wadi of Chandubhai. One girl came crying at the wadi of Chandubhai. She came near ghat. That girl has put on kurta. She had not put on anything in the lower part of the body. Kurta was torn. That girl has chorni (trouser) in her hand. In her other hand, she has school books and dafther (bag). On that ghat, two workers named Haribhai and Ambabhai were present. He rushed near the girl. Little away from that ghat, on the railway track, he saw one man fleeing away on a bicycle. He asked that girl what is her name and what happened; why are you crying. That girl told him that her name is Chandrika. She is the daughter of Manubhai. She is staying at Dharamwadi. Girl also told him that she was coming from the school. At that time, the person, who has run away, had brought her in that pit on a bicycle. She was given 3-4 slaps by that person on the bicycle and he has raped her. That girl also told him that that cyclewala has injured her with nails and made her lie down and climbed over her. He cannot identify properly the accused, who is present in the court because at the time of incident, he only saw him running away. He saw a person running away on cycle at the time of incident. That person had put on whitish shirt and coffee coloured pant. He had put on shawl round his neck. He asked the girl whether the person who is running away is the person. Girl replied that he is the man. 4 to 5 workers came to his wadi from the direction in which cyclist ran away. He came to know that the person who ran away was Mitio. In the cross-examination, he has admitted that the place where the incident took place cannot be seen from the place where he was sitting. He saw the man running away on a cycle. He has seen the back portion of the person running away on cycle. He has not seen his face. At the time of incident, it was winter. It is not true that it was dark at the time of incident. Light, which is there at 6.00 PM in summer, is not there at 6.00 evening in winter. He saw the cyclist running away for the first time. He was at the distance of 100'. He cannot say

that the man in the court as an accused was the same man whom he saw running away on cycle. Girl has not given him the name of the accused and he did not ask the name of the girl. He has not accordingly stated so before the Police. Girl has not given him the name of Mitio as a person who has raped her. He did not ask the name of Mitio to the girl.

Reading the evidence of P.W.4 - prosecutrix and Sureshbhai P.W.2, it is to be appreciated whether the girl knew the accused; girl knew the name of the accused; girl disclosed the name of accused to Sureshbhai; and how the name of the accused came to be disclosed for the first time. Ordinarily, these questions would not arise as it appears that the girl has given the name of the accused in her examination-in-chief. It is the case of the prosecutrix that when she was taken on bicycle by the accused, she has asked the name of the accused and accused has replied his name to be Mitio. If prosecutrix was given the name as Mitio by accused himself, there was no reason for her to every time say and refer as cyclewala when Sureshbhai asked her as to what happened. Sureshbhai P.W.2 has stated in his evidence that 4 to 5 workers when came near his wadi had disclosed that one who was running away on a cycle was Mitio. We have to bear in mind that place of incident appears to be at a distance of about 100' from where Sureshbhai P.W.2 was sitting. When Bhagdanbhai P.W.1 saw the accused and the girl in the pit, accused got up and ran away. By that time, girl also being released, ran towards wadi of Chandubhai, where Sureshbhai was sitting at the instance of Bhagdanbhai. When girl reached the wadi of Chandubhai, attention of Sureshbhai must have been drawn towards that direction, as it is not the case of Sureshbhai P.W.2 that on hearing the shouts of girl, his attention was drawn in that direction. So, when the girl i.e. prosecutrix, reached about 100' in one direction, accused - cyclist had run away on his cycle in another direction. That distance must have increased at least double the distance of 100'. We can assume that cyclist must have at least run faster than one who runs on foot. So, when Sureshbhai P.W. 2 saw some cyclist running away in other direction, he must have covered 200' in any case. In our opinion, Sureshbhai has rightly stated before the court that he cannot identify the person, whom he saw running away. Persons from whom Sureshbhai learnt the name of that cyclist are not examined before the court. Therefore, name disclosed by those persons to Sureshbhai P.W.2 and say of Sureshbhai on this aspect is hearsay evidence and not admissible in law. Girl has disclosed the name in her evidence, by saying that it is she who asked the name of the accused and the accused

disclosed the same. Despite that, in the cross-examination, she has admitted that she was not knowing the name of the accused before the incident took place. She knew the name of the accused because accused had told her his name. Person, who is committing such an act of inhumanity, would not disclose his name to anyone of his own or on asking by the victim.

Assuming for the sake of argument that accused has disclosed his name before the girl on her asking, then prosecutrix very well knew the name of the accused. Yet she is not referring the name of the accused before Sureshbhai P.W. 2. Before Sureshbhai when she narrates the incident, she all the time refers to as a cyclist, but is not referring the name of the accused. Therefore, disclosure of the name of the accused by the prosecutrix as she was informed by the accused, casts great suspicion. This suspicion is enhanced further in view of the following facts.

After Sureshbhai P.W.2 took prosecutrix at her residence, she was taken to hospital. According to Labhubai P.W.11, mother of the prosecutrix, she was taken to the hospital. However, the hospital authority told them to go to the Police Station and then they have gone to the Police. Police recorded the complaint and then she was sent to doctor for medical examination. It is true that in her complaint, prosecutrix has disclosed the name of the accused. From the evidence of P.W.11 and P.W.4, it is clear that they have first gone to doctor from where they are advised to go to the Police and then come back to the hospital. Before the Police, complaint is registered and then they have gone to Dr.Sureshkumar P.W.13. Dr.Sureshkumar P.W.13 has deposed that nicker's rear portion was stained with blood and white substance. That he handed over that nicker to the Police. All the clothes were smeared with dust. The stains on the nicker of the girl Chandrika could have been caused when girl put on her nicker after the incident of rape. When P.W. 4 - prosecutrix was taken to Dr.Sureshkumar P.W.13, he has recorded the history in Ex.38. As it is very relevant, free-hand translation of the same is as under:-

"When I was coming back from the school, one unknown person called me and told that my mother calls me. I was taken on cycle and left near Dhoraji crossing. I was taken to a lonely place and was asked to lie down "

Doctor has stated in that very case papers that on enquiry from the father, it is stated that when she was going home from the school, one Mitio Ramji took her by giving slaps. He was so informed by persons working on ghat near Dharamwadi. In the case papers, doctor has also referred as to the clothes. She had put on white

kurta, pyjama and nicker stained with blood and white substance. The history referred above is recorded by the doctor, as per case papers Ex.38, at 8.25 P.M. on 3.1.91. The complaint is registered by the Police Sub Inspector at 19.10 i.e. 7.10 P.M. on 3.1.91. After complaint was registered, Police had commenced investigation and on calling panchas, clothes of prosecutrix were seized vide panchnama Ex.17. Three clothes are seized, viz. bush shirt, trouser and nicker. As per the panchnama Ex.17, bush shirt and trouser do not bear any stains either of blood or any kind while nicker contain stains of blood as well as some other substance. That panchnama is over by 19.55 i.e. 7.55 PM. Immediately thereafter, she was taken to the hospital, where she is examined. In her complaint, she has given the name of the accused as Mitio.

If the prosecutrix knew this person who committed rape on her as Mitio, as disclosed by accused there, then why she has not disclosed the name of the accused to others who met her and in particular, Sureshbhai P.W.2 and Dr.Sureshkumar P.W.13 ? Why before Dr.Sureshkumar P.W.13 her father has disclosed name of Mitio as learnt from some workers working on Ghat? How is it that within an hour after giving complaint name of accused is forgotten and how is it that an hour before giving the complaint the name is also not disclosed to Sureshbhai ? The incident, disclosure of the incident, complaint before Police, examination by the doctor of the prosecutrix, all these happened in quick succession. We may give all concession to prosecutrix, who is aged about 11 years. We have all our sympathy with her for the act or for what she has suffered, but the question is when she knew the name of the accused at the time of commission of incident, what made her not to disclose that name when she was enquired of the incident by Sureshbhai P.W.2 and what made her there to refer to as a person who committed wrong with her as cyclewala only ? What made her to disclose the name of accused before her mother, before Police and not before the doctor ? In our opinion, there appears to be something wrong somewhere as to the sequence in which the name of the accused came to be disclosed. Before we discuss that, it will be relevant to refer to one additional aspect. Clothes of the prosecutrix are seized by the Police by panchnama Ex.17 drawn between 7.20 to 7.55 PM of 3.1.91. It is specifically stated in the panchnama that except nicker, no other cloth has any stains either of blood or anything. It is specifically stated in the panchnama that other clothes were brought from residence and prosecutrix was made to put on those new clothes. According to the prosecution, she was then sent to

Dr.Sureshkumar P.W.13. When P.W.13 examined her, her clothes are found smeared with dust. Her nicker was stained with blood and some substance. That nicker is returned back to the Police, but that nicker is not forthcoming on record; nor it is sent to F.S.L. for examination. If the clothes were changed, old being seized by Police, how they were smeared with dust ? Why the nicker, which was returned by the doctor, is not sent to FSL ? Apart from this, when it is specifically stated in panchnama that except nicker no other cloth is stained with blood or any other thing, how those two clothes other than nicker are found stained with blood vide report of FSL Ex.56 ? Report of serologist is also annexed with Ex.56. Nicker of prosecutrix is stained with semen of 'O' Group while nicker of accused is also stained with semen of 'O' group. This would be a clinching circumstance against the accused, but when Article no.1 and 2 seized were not found stained with either blood or any other substance, then how they are found stained with blood and semen by FSL ? This creates a doubt which, in our opinion, entitle us not to rely on this evidence.

Keeping this playing smart of the investigating agency in mind, we now revert back to the question of identity of the accused. Before Dr.Sureshkumar P.W.13 and Sureshbhai P.W.2, prosecutrix P.W.4 had not disclosed the name of the accused as she did know it. She had at no point of time given any description of the accused. Simply because she identified the accused in court room, where there would be only one person in accused dock, is not safe to accept that identity and rely on it. In our opinion, it appears that someone referred the name Mitio when prosecutrix was at the wadi of Chandubhai and it appears a guess that the cyclist who met them was also Mitio. In absence of examination of any one of those whom some cyclist, according to them met, as witness, to accept the name given by them as a person who has committed this act, rather a heinous act, on a girl of tender age of 11 years, will be doing injustice to the accused. Before Dr.Sureshkumar P.W. 13, father of the prosecutrix has disclosed that he has learnt the name of Mitio as a person who has taken away the girl after giving slaps. Father is not examined as a witness. In our opinion, even if the father was examined, it was of no relevance unless the person from whom he learnt the name was examined.

When the prosecutrix was examined by Dr.Sureshkumar P.W.13, she was accompanied by Police Constable Chandrakant Jivrambhai and her father also, as it appears from the case papers. However, from the evidence of her mother P.W.11, it is clear that she has

stated that Chandrika was taken to Jetpur Government Hospital for treatment before her husband came. In the cross-examination, she has admitted that her husband came in the hospital later on. In any case, father had come later on and the mother took her to the hospital. Thus, when the doctor examined the prosecutrix, mother was also present in the hospital. When father, mother and Police were present in the hospital, there was no reason for her to get confused and not to disclose the name of the accused when she had already disclosed the name of the accused before the Police while giving complaint. This fact, in our opinion, creates doubt as to whether she knew the accused, she identified the accused, she asked the accused about his name and he disclosed his name. Question is whether a person who has such a foul intention of committing of such heinous offence, would disclose his name and if discloses the name, would he disclose a correct name ? This makes the identity of the accused a doubtful one. Investigating agency has not held any Test Identification parade in the instant case. Girl has not given any description of the accused at any time. She only comes out with the say that on her asking accused disclosed the name. This appears to be most improbable, more particularly in the circumstances of this case. Thus, prosecution has failed to prove beyond reasonable doubt the identity of the accused in the instant case.

Name of the accused appears to have been disclosed probably because the accused is a person who is once convicted for such an offence. Accused belongs to the community of the prosecutrix. Accused is an ordinary resident of this very town and probability of accused being roped in when real person is not known to the prosecutrix cannot be ruled out. The time of the incident also suggests that prosecutrix might not be able to see properly face of the person, as it was evening at about 6.00 of January when there may not be sufficient light. Apart from this, investigating agency has not drawn any map of the place of occurrence to show how the place of incident is located and nature of locality; whether it is thickly populated or thinly populated; how far is railway crossing from the scene of offence; how far is Chandubhai's wadi from the scene of offence; in which direction wadi of Chandubhai is located, railway station is located; in which direction the accused ran away; and from which direction those labourers were coming. All these facts, which are most relevant to establish the identity of the accused have been kept back by the investigating agency for the reasons best known to them. If it is because of their inefficiency, then the facts are required to be brought to the notice of the

higher officers. If it is deliberately done, then also it is required to be brought to the notice of the higher authority that the officer lacks even preliminary knowledge as to how investigation is to be carried out.

In view of the above discussion, when the identity of the accused is not fully established without any trace of doubt, appellant accused must get the benefit of doubt.

In the result, the appeal is liable to be allowed and is allowed. The judgment and order of conviction and sentence is set aside. Accused be set at liberty forthwith, if not required in any other case. Fine if paid and paid to the prosecutrix, need not be recovered back.
